

REMARKS

The present application has been reviewed in light of the Office Action dated October 3, 2008. Claims 1-25 are presented for examination, of which Claims 1, 9, and 22 are in independent form. Claims 1-9 and 22-25 have been amended to define aspects of Applicant's invention more clearly. Favorable reconsideration is requested.

The Office Action states that Claims 9-21 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Without conceding the propriety of these rejections, Applicant has carefully reviewed and amended independent Claim 9, with special attention to the points raised in section 1 of the Office Action. It is believed that the rejections under 35 U.S.C. § 101 have been obviated, and therefore their withdrawal is respectfully requested.

The Office Action states that Claims 4, 15, and 20-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0117302 (*Wiechert et al.*) in view of U.S. Patent Application Publication No. 2004/0151353 (*Topping*); that Claims 2, 4, 15, and 20-25 are rejected under § 103(a) as being unpatentable over *Weichert et al.* in view of *Topping*, and further in view of U.S. Patent Application Publication No. 2004/0049452 (*Blagg*). For at least the reasons presented below, Applicant submits that independent Claims 1, 9, and 22, together with the claims dependent therefrom, are patentably distinct from the cited references.

Claim 1 is directed to an apparatus that includes a processor and a memory storing a program executable by the processor, in which the program includes computer code for implementing a method for facilitating use of a transaction account. Among other notable features of Claim 1 is "determining, based on selection criteria, at least one of said first and

second transaction accounts to access for processing a transaction, . . . wherein said selection criteria further include said first transaction account being selected by default based on a type of merchant associated with said transaction.” By virtue of this feature, an account can be configured as a default according to a particular type of merchant, so that the user can avoid the need to select that account during every transaction with that type of merchant. For example, transactions at gas stations may be configured to default to an account that provides an incentive at gas stations, and transactions made at ATMs may be configured to default to a stored value account.¹ Thus, the user can realize benefits of having various accounts on a single transaction instrument that requires minimal effort during transactions.

Weichert et al., as best understood by Applicant, relates to a method for making payments to a payee using a payment account. According to the method, information on a number of payment accounts of a user is retrieved, and the user can be presented with a list of the payment accounts from which to choose for completing a transaction. The list can be prioritized according to an incentive. One of the payment accounts can be suggested to the user based on inadequacy of an initially selected payment account. However, *Weichert et al.* is not understood to disclose or suggest using one of the plurality of accounts by default, i.e., if no other account was selected. Indeed, apparently in *Weichert et al.*, a selection is always required except for the simple case where there is only one transaction account on a transaction instrument. Moreover, because *Weichert et al.* is not understood to disclose or suggest configuring one of the plurality of accounts as a default account altogether, Applicant submits *Weichert et al.* cannot reasonably be said to disclose configuring one of the accounts as a default according to a particular type of merchant.

¹ The example(s) provided herein are intended to be illustrative and are not to be construed to limit the scope of the claims.

In summary, nothing has been found in *Weichert et al.* that is believed to teach or suggest “determining, based on selection criteria, at least one of said first and second transaction accounts to access for processing a transaction, . . . wherein said selection criteria further include said first transaction account being selected by default based on a type of merchant associated with said transaction,” as recited in Claim 1.

Topping is cited in the Office Action as disclosing the linking of biometric indicators to specific functions on a computer. Applicant submits, however, that *Topping* fails to remedy the deficiencies of *Weichert et al.* That is, *Topping* is not understood to disclose or suggest “determining, based on selection criteria, at least one of said first and second transaction accounts to access for processing a transaction, . . . wherein said selection criteria further include said first transaction account being selected by default based on a type of merchant associated with said transaction,” as recited in Claim 1.

A review of the other art of record has failed to reveal anything that, in Applicant’s opinion, would cure the deficiencies of *Weichert et al.* and *Topping*, as applied against the independent claims herein. In particular, although *Blagg* is understood to disclose default accounts in general, *Blagg* is not understood to disclose or suggest “determining, based on selection criteria, at least one of said first and second transaction accounts to access for processing a transaction, . . . wherein said selection criteria further include said first transaction account being selected by default based on a type of merchant associated with said transaction,” as recited in Claim 1 (emphasis added).

Accordingly, in view of the above, Applicant submits that Claim 1 is patentable over the cited references, whether considered individually or in any permissible combination. Therefore, withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

Independent Claims 9 and 22 include a determination feature similar to that discussed above in connection with Claim 1, and are believed to be patentable for at least the reasons discussed above. Additionally, the other rejected claims in the present application depend from one or another of the independent Claims 1, 9, and 22, and therefore are submitted to be patentable for at least the same reasons. Because each dependent claim also is deemed to define an additional aspect of the invention, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

This Amendment After Final Action is believed clearly to place the present application in condition for allowance. Therefore, entry of this Amendment under 37 C.F.R. § 1.116 is believed proper and is respectfully requested, as an earnest effort to advance prosecution and reduce the number of issues. Should the Examiner believe that issues remain outstanding, it is respectfully requested that the Examiner contact Applicant's undersigned attorney in an effort to resolve such issues and advance the case to issue.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and an early passage to issue of the present application.

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CONCLUSION

Applicant's undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,

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